

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

ED BUTOWSKY,

§§§§§§§§§§§§

Plaintiff,

V.

CASE NO. 4:18-cv-00442-ALM

**DAVID FOLKENFLIK; NPR, INC.;
EDITH CHAPIN; LESLIE COOK; and
PALLAVI GOGOI,**

Defendants.

**UNOPPOSED MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL
EVIDENCE IN SUPPORT OF MOTION TO COMPEL UNDER SEAL**

Briefing on Defendants' Motion to Compel Discovery Pursuant to Fed. R. Civ. P. 37 (Dkt. 85), which seeks documents and interrogatory responses from Butowsky, closed on February 18, 2020. Since that time, NPR has obtained additional evidence demonstrating the degree to which Butowsky has failed to comply with his discovery obligations. This evidence, as set forth in the Notice of Supplemental Evidence (and the Exhibits thereto), consists of (1) phone and text-message records received from Butowsky's cell phone provider and (2) Butowsky's email correspondence received through a third-party subpoena to Aaron Rich. While NPR had sought the third-party documents before briefing on its Motion to Compel closed, through no fault of its own, NPR did not obtain the documents until April 2020.

This additional evidence supports NPR’s request—as made in the original motion—to require Butowsky to hire a vendor to search his electronically stored information. Because this information is relevant to the Court’s consideration of NPR’s Motion to Compel, and because the

evidence was not obtained until after the briefing on NPR's Motion closed, NPR requests leave of Court to file a Notice of Supplemental Evidence.

NPR's proposed Notice of Supplemental Evidence relies on and discloses documents and information that have been designated confidential pursuant to the Stipulated Protective Order entered in this case on August 8, 2019 (Dkt. 67). Accordingly, NPR respectfully requests that, if the Court grants leave to file the Notice of Supplemental Evidence, it also grant leave to seal the Notice of Supplemental Evidence and accompanying exhibits. Defendants will file a redacted version of the Notice of Supplemental Evidence within two business days pursuant to this Court's local rule CV-5(a)(7)(E) regarding filing of documents under seal.

DATED: May 8, 2020

Respectfully submitted,

HAYNES AND BOONE, LLP

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CERTIFICATE OF CONFERENCE

The undersigned counsel certifies that counsel has complied with the meet and confer requirement in Local Rule CV-7(h). On May 7, 2020 the parties conferred telephonically and by e-mail. Plaintiff is unopposed to the relief sought in this Motion.

/s/ Laura Lee Prather
Laura Lee Prather

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on May 8, 2020, the foregoing document was electronically submitted to the Clerk of the U.S. District Court for the Eastern District of Texas, using the electronic case filing system, which will send notification of such filing to all counsel of record.

/s/ Laura Lee Prather
Laura Lee Prather